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Sent: Wed 6/6/2012 1:43:39 PM

Subject: Water Law News for June 6, 2012

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[Senate Draft Proposal Does Not Include Riders on Keystone, Coal Ash Management](#)

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WATER LAW NEWS

JUNE 6, 2012

HIGHLIGHTS

Energy

House Expected to Wrap Up Energy-Water Bill After Considering Dozens of Amendments

The House is expected to finish work on a \$32.1 billion energy and water spending bill June 6 after considering amendments that would roll back energy-efficiency standards for light bulbs and increase funding for the Yucca Mountain nuclear...

Superfund

EPA Releases Review of Hudson River PCB Project

ALBANY, N.Y.—The Environmental Protection Agency on June 4 released a five-year review of the project to dredge polychlorinated biphenyls from the Hudson River, as required under the superfund law. The review incorporates the comprehensive...

Transportation

Senate Draft Proposal Does Not Include Riders on Keystone, Coal Ash Management

A draft transportation reauthorization bill that Senate conferees sent to House members June 5 does not include most of the controversial "non-transportation" environmental amendments, said Sen. Barbara Boxer (D-Calif.), the...

Water Pollution

House Panel to Vote on Bill to Block EPA, Corps From Finalizing Water Act Guidance

The House Transportation and Infrastructure Committee plans to mark up legislation June 7 that would prohibit the Environmental Protection Agency or the U.S. Army Corps of Engineers from finalizing proposed guidance that would widen federal...

Mayors Urge EPA To Halt Water Enforcement Until Key Issues Resolved

The U.S. Conference of Mayors (USCM) is stepping up its calls for EPA to limit its use of enforcement to address municipal noncompliance with Clean Water Act requirements, seeking a "moratorium" on new actions while reiterating calls for EPA to base its stalled policy for integrating sewer overflow and stormwater runoff rules on permits rather than consent decrees.

Rare Tort Ruling Stresses Difficulties In Proving Fracking's Harmful Effects

A rare ruling by a state judge dismissing toxic tort litigation against natural gas drillers highlights the uphill battle landowners -- and EPA -- face in trying to show that hydraulic fracturing causes adverse effects, while also encouraging industry to ask courts to require plaintiffs early on in the suit to prove a link between fracking and health impacts.

EPA Floats Options For New Health Goal For Perchlorate In Drinking Water

EPA is suggesting a range of potential new drinking water health goals for the ubiquitous rocket fuel ingredient perchlorate, a goal that once selected will inform the landmark enforceable cleanup standard the agency intends to set for the substance, according to an EPA white paper released prior to an upcoming peer review of the agency's assessment.

Atrazine Pact May Bypass Precedent On Low-Dose Exposure Risks

The recent class action settlement between Midwestern drinking water utilities and pesticide manufacturer Syngenta over contamination from the company's herbicide, atrazine, sidesteps a sought-after precedent on how courts will deal with tort suits seeking damages from toxic substances that may pose harms at low doses of exposure, legal experts say.

PUBLIC LANDS:

House approves bills on water for tech companies, mine cleanup and scenic rivers

Jessica Estepa, E&E reporter

Published: Wednesday, June 6, 2012

The House yesterday approved seven public lands bills, including measures to give more water to an Oregon town hoping to draw technology companies, to clean up a Nevada mine and to designate scenic rivers.

The measures all passed by voice vote.

The House approved H.R. 2060, by Rep. Greg Walden (R-Ore.), which would allow the release of an additional 5,100 acre-feet of water from the Prineville Reservoir to the Crooked River in central Oregon. The water would benefit the town of Prineville, which is aiming to attract technology companies that want to use water to power their data centers.

Walden described the town as one of the hardest hit during the recession and said the bill would help bring down the 14 percent unemployment rate as tech companies start to set up shop in the area. Facebook Inc. recently opened a data center in the town, and Apple Inc. has announced that it plans to build one in the area.

The House also passed H.R. 2512, by Rep. Joe Heck (R-Nev.), to clean up the Three Kids manganese mine in southern Nevada. The area, which has encroached on the borders of Henderson, Nev., has open pits filled with substances such as arsenic, lead and petroleum. The measure has support from the entire Nevada delegation, including Senate Majority Leader Harry Reid (D-Nev.).

Rep. Raúl Grijalva (D-Ariz.) expressed concerns that the bill removes the federal government's liability in the cleanup of the mine, echoing objections made by the Obama administration. But he said that while the bill was not perfect, it would mean that the site would not just "just sit there."

The House also approved H.R. 1740, by Rep. Rick Larsen (D-Wash.), which would designate more than a dozen miles of Illabot Creek as a wild and scenic river. The measure aims to safeguard the habitat for threatened chinook salmon, steelhead, bull trout and other wildlife.

Sen. Patty Murray (D-Wash.) has introduced companion legislation in the Senate, S. 888, which is awaiting a full vote from the chamber after being passed by the Energy and Natural Resources Committee in January.

"This is an important step toward preserving Illabot Creek and making sure future generations can access the tremendous natural beauty of one of our state's most amazing natural spaces," Murray said in a statement.

Other bills the House passed include:

H.R. 3263, by Rep. Tom Cole (R-Okla.), which would authorize the Interior secretary to amend an existing contract with the Central Oklahoma Master Conservancy District for the storage and conveyance of nonproject water in Norman project facilities to help the supplies for the cities in the district. Rep. James Lankford (R-Okla.) supported the bill on the floor, saying, "It is amazing that it takes an act of Congress for an Oklahoma lake to buy water from another Oklahoma lake."

H.R. 241, by Rep. Elton Gallegly (R-Calif.), which would authorize the Forest Service to enter into a land exchange for lands in the Los Padres National Forest in California.

H.R. 2336, by Rep. Chellie Pingree (D-Maine), which would designate parts of the York River as wild and scenic and allow for some of the rivers tributaries to be studied for potential inclusion under the act.

"The York River is an economic and ecological asset to the area, and this legislation could help protect and preserve it," Pingree said.

H.R. 4222, by Grijalva, which would transfer federal lands to the Tucson Unified School District and to Arizona's Pascua Yaqui Tribe. Grijalva said he worked with the Bureau of Land Management to ensure that an environmental review of the land would

take place.

Also debated on the House floor were two Senate bills, but House Natural Resources Chairman Doc Hastings (R-Wash.) objected to votes on the grounds that a quorum was not present. They will be voted on as soon as today.

The bills were S. 292, by Sen. Lisa Murkowski (R-Alaska), which would resolve the claims of the Bering Straits Native Corp. and the state of Alaska to land adjacent to Salmon Lake in Alaska, and S. 363 by Sen. Roger Wicker (R-Miss.), which would transfer land owned by the National Oceanic and Atmospheric Administration to the city of Pascagoula, Miss.

GREAT LAKES:

Ohio poll shows support for restoration, ignorance over Asian carp

Paul Quinlan, E&E reporter

Published: Tuesday, June 5, 2012

Environmentalists released a poll today taken in the battleground state of Ohio that they say shows broad support for continued federal funding of Great Lakes environmental restoration, and concern -- as well as ignorance -- over the threat of an Asian carp infestation.

The poll, commissioned by the Healing our Waters-Great Lakes Coalition, found that 72 percent of Ohio general election voters supported continued Great Lakes restoration funding, including 47 percent who strongly supported it.

Meanwhile, a 54 percent majority rejected the idea that the Great Lakes should take a budget cut along with everything else, the survey found.

Respondents indicated little familiarity with the Asian carp, a voracious, non-native fish that threatens to invade the Great Lakes from the Mississippi River and decimate the region's prized sport fishery.

Despite press coverage of the threat and repeated battles and congressional hearings about the invasive fish, 42 percent had heard "nothing at all" about Asian carp, while 20 percent had heard "only a little," 21 percent "some" and 16 percent "a lot."

Pollsters found, however, that a brief description of the issue prompted overwhelming concern that Asian carp could enter Lake Erie. Ninety percent of those surveyed said they would be concerned about Asian carp entering Lake Erie, including 57 percent who indicated they were very concerned, according to the results.

"This should be a wake-up call to both Presidential campaigns that are so focused on the Buckeye State," Emma White, senior director at Belden Russonello Strategists LLC, the Washington, D.C.-based polling firm that wrote the questions, said in a statement. "From our polling, it is clear that standing up to protect Lake Erie and taking action to beat back the invasive Asian carp are winning issues among this critical constituency."

Opinion was more divided about the favored solution among environmentalists and leaders of some Great Lakes states: erecting a physical barrier to close off the Chicago canals that barges use to pass between the two water bodies, a solution that shipping interests and Chicago-area leaders say could hurt the economy.

Forty-nine percent of Ohio voters supported erecting the barrier, while 29 percent opposed the idea and 22 percent said they were unsure, the pollsters found.

Pollsters also asked about the Obama administration's battle to expand the federal Clean Water Act jurisdiction over some wetlands and small, seasonally flowing streams (Greenwire, June 5), concluding that Ohio voters show "broad bipartisan support for an expansive reading of the Clean Water Act."

A simple characterization of the debate that asked whether the Clean Water Act should apply "to wetlands and small streams" found that 68 percent overall said it should, including 55 percent of Republicans, 66 percent of independents and 79 percent of Democrats.

The survey of 804 general election voters in Ohio was conducted May 14-18 by Fallon Research & Communications Inc. of Columbus, Ohio.

GREAT LAKES:

Green groups may seek EPA assessment of mining in watershed

Manuel Quinones, E&E reporter

Published: Tuesday, June 5, 2012

Inspired by U.S. EPA's recent assessment of a proposed mining project's possible impact on Alaska's Bristol Bay watershed, Midwestern environmental groups are weighing a request for a similar study of the Great Lakes watershed.

"It's an idea that several of the groups have wanted to discuss, and we are discussing it," National Wildlife Federation attorney Michelle Halley said in an interview. "But we have not made any formal request for EPA."

Last month, the federation released a report about mining oversight gaps in Michigan, Minnesota and Wisconsin (Greenwire, May 10). The document highlighted the lack of regional coordination and called for more involvement from agencies like EPA.

"Nobody is looking at the big picture about the watershed-level impacts," said Halley, who has called the Great Lakes area a "bull's-eye" for mining and mineral activities.

PolyMet Mining Corp. is in the permitting process to open Minnesota's first sulfide mine, an open-pit project for extracting copper, nickel and other materials.

In Michigan's Upper Peninsula, Rio Tinto PLC is working on a \$469 million mine that will produce nickel and copper. And Hudbay Minerals Inc. is looking to mine precious and heavy metals, from gold to zinc, in a \$225 million project (Greenwire, May 25).

Rep. Dan Benishek, a freshman Republican who represents Michigan's Upper Peninsula, is keen on mineral development as a means to job creation. That is why he worries about the prospect of EPA intervention.

At a hearing last week he asked, "What am I going to tell people who are looking forward to the resurgence in mining?"

House Energy and Minerals Subcommittee Republicans expressed concern about EPA's retroactive veto of a large coal mining project in West Virginia. And they shuddered at the prospect of the agency's first pre-emptive veto regarding the Pebble Limited Partnership gold and copper project in Alaska.

While EPA has said there is no decision on whether to move forward with a veto in the Alaska case, company and mining industry leaders are wary of the agency's intentions, especially in light of its ongoing watershed assessment process.

"That has a lot of folks very very worried about it," said Ross Eisenberg, energy policy vice president at the National Association of Manufacturers, at the hearing. "Environmental groups have already started asking for a watershed assessment similar to that for the Great Lakes region."

Halley said the groups may request that EPA study the Lake Superior Basin and a portion of Lake Michigan Basin. She stressed that talks are preliminary.

"We are trying to rise above the state-level politics and dynamics," Halley said. "The EPA is the only game in town when it comes to this issue."

WATER:

Ohio governor approves Lake Erie permit program

Published: Tuesday, June 5, 2012

After months of legislative battles, Ohio Gov. John Kasich (R) signed a bill yesterday creating a program for Lake Erie water-withdrawal permits.

The legislation requires businesses wanting to take more than 2.5 million gallons a day from Lake Erie, 1 million gallons a day from rivers and streams feeding the lake or 100,000 gallons a day from "high-quality" streams to obtain permits. Kasich vetoed similar legislation with a higher threshold last year.

The legislation is a move to come into compliance with the multistate Great Lakes Basin Compact, a plan to manage freshwater lake withdrawals. The deadline for the state to have a withdrawal limit program is December 2013.

In an unusual move, the governor signed the bill without ceremony, and his office did not issue a public statement. His office directed journalists to an Ohio Department of Natural Resources fact sheet about the legislation.

The legislation has come under criticism from environmentalists, charter boat captains and angler groups, which said it does not do enough to protect Lake Erie. Even so, the law will take effect in 90 days (Aaron Marshall, Cleveland Plain Dealer, June 4). -- WW

WETLANDS:

House panel to mark up bill that would halt Obama regulatory guidance

Paul Quinlan, E&E reporter

Published: Tuesday, June 5, 2012

The House Transportation and Infrastructure Committee has scheduled a Thursday markup for legislation that would prevent the Obama administration from finalizing a guidance widening federal regulatory authority over some wetlands and isolated water bodies.

The markup announced today addresses a bill (H.R. 4965) that was filed last month by a bipartisan group of House committee leaders and now carries 64 co-sponsors (Greenwire, April 27).

The three-page bill would prohibit U.S. EPA or the Army Corps of Engineers from finalizing Clean Water Act regulatory guidance proposed last year. The legislation would also prohibit the proposed guidance from being used as the basis for any decisions or new regulations concerning the scope of the Clean Water Act.

Administration officials, environmentalists and conservation groups argue that the policy aims to fix problems created by two muddled Supreme Court rulings and guidance enacted under the George W. Bush administration.

They say those court decisions, coupled with the Bush guidance that is currently in effect, rolled back federal protections and have hamstrung federal Clean Water Act enforcement ever since.

Agriculture, mining, homebuilding and oil industry lobbies contend that the Obama administration proposal misinterprets the Supreme Court rulings and amounts to unconstitutional regulatory overreach that would stifle economic recovery and trample private property and states' rights.

House Transportation Chairman John Mica (R-Fla.) filed the bill with ranking member Nick Rahall (D-W.Va.), Water Resources Subcommittee Chairman Bob Gibbs (R-Ohio), and Agriculture Chairman Frank Lucas (R-Okla.) and ranking member Collin Peterson (D-Minn.).

The bill is part of a full-court press by congressional Republicans and some coal- and farm-state Democrats to stop the Obama water guidance proposal, which is now under final review at the White House Office of Management and Budget (Greenwire, Feb. 22). While these efforts have succeeded in the House, they have failed to gain traction in the Democratic-controlled Senate.

Just last week, opponents of the policy succeeded in defeating an effort on the House floor to strike a policy rider from a major appropriations bill being considered this week that would also block the proposed Clean Water Act guidance from taking effect.

(Greenwire, June 1).

EVERGLADES:

Fla. agency unveils \$880M restoration plan

Published: Tuesday, June 5, 2012

The South Florida Water Management District yesterday released a 12-year, \$880 million plan to restore the Everglades, the latest move in a years-long legal battle over the ecosystem's water quality.

The plan would create five stormwater treatment areas, covering about 57,000 acres, to filter phosphorus from fertilizer that helps unhealthy vegetation, killing off native plants. The agency, which is leading the effort on Everglades restoration, based it on proposals from U.S. EPA and the state Department of Environmental Protection.

Lawsuits over the enforcement of the Clean Water Act in the region date back to 1988, and many of the proposals to settle the complaints have centered on lowering phosphorus levels in the wetlands.

"Water entering the natural system will finally be cleaned up," said Eric Draper, executive director of Audubon Florida. "This is a necessary step toward getting fresh water into the parched Everglades" (Matt Sedensky, AP/Palm Beach Post, June 4). -- JE

ClimateWire -- Wed., June 6, 2012 -- Read the full edition

1. EMISSIONS TRADING: China's once red-hot CDM market cools, but domestic trading may soon fire up
SHANGHAI -- The year 2012 is viewed as a catastrophic time in several Mayan theories as well as by a Hindu sect in India. And now, some carbon emissions traders may harbor similar thoughts. Consulting companies that profit from registering and selling carbon credits through an international carbon emission offset mechanism are running into a live-or-die situation this year, as the mechanism on which their business relies confronts an uncertain future.

2. RISK: Canadian insurers warned to adapt to floods, fires and flood of damage claims
Canadian insurance companies were warned this week that damage from heavier rainfall, more forest fires and other catastrophes will likely keep climbing as the northern climate continues to warm. The Insurance Bureau of Canada commissioned a report designed to help insurers and public officials foresee risks through 2050. They face uneven changes in a nation that stretches from the rapidly warming Arctic to the populated southern prairies and coasts.

TODAY'S STORIES

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 4. NATIONS: Climate change will create severe power and food shortages for Latin America and the Caribbean
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- E&ETV's OnPoint
12. OFFSHORE DRILLING: Maguire Energy Institute's Weinstein discusses impact of regulations on Gulf energy production

EnergyWire -- Wed., June 6, 2012 -- Read the full edition

1. STATES: Wyo. official pins Pavillion pollution complaints on greed
VANCOUVER, British Columbia -- Wyoming's top oil and gas official yesterday said the people in Pavillion, Wyo., who have complained that drilling polluted their water are motivated by money. "I really believe greed is driving a lot of this," state Oil and Gas Supervisor Tom Doll told a meeting of fellow state regulators here. "I think they're just looking to be compensated."

THIS MORNING'S STORIES

2. NATURAL GAS: Low prices cloud future for long-haul pipelines -- S&P study
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